

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL D. MILLER,

Defendant.

NO. 2:18-CR-0034-TOR

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is Defendant's Motion for Reconsideration. ECF No. 47. The Court has reviewed the record and files therein and is fully informed. For the reasons discussed below, Defendant's motion is denied.

DISCUSSION

Defendant seeks reconsideration of this Court's August 13, 2021, denial of his motion to reduce his sentence. ECF No. 47. Defendant contends that he is now eligible for safety valve reduction in his guideline calculation.

1 On December 21, 2018, the First Step Act became effective. In part, it
2 changed the requirements necessary for the Safety Valve to apply. Congress,
3 however, did not make the provision retroactive. *United States v. Manzo*, 793 Fed.
4 Appx. 620 (9th Cir. 2020). The First Step Act specifically provides that such
5 amendments are only to apply if the sentence has not been imposed as of the date
6 of the Act's enactment. First Step Act of 2018, Pub. L. No. 115-391, § 402(b), 132
7 Stat. 5194, 5221 ("The amendment made by this section shall apply only to a
8 conviction entered on or after the date of enactment of this Act.").

9 Defendant was sentenced on October 23, 2018, before the Act became
10 effective and the change in law for safety valve calculations does not apply
11 retroactively. Because Defendant was sentenced before the First Step Act was
12 enacted, he is not entitled to be resentenced according to its reforms. *See United*
13 *States v. Asuncion*, 974 F.3d 929, 934 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2544
14 (2021).

15 Defendant contends that his criminal history does not preclude him from the
16 new Safety Valve amendment. However, Defendant presented to the Court at
17 sentencing with criminal history category VI and was precluded from the Safety
18 Valve before the amendment.

19 //

20 //

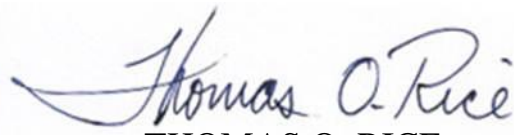
1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Defendant's Motion for Reconsideration, ECF No. 47, is **DENIED**.

3 The District Court Executive is directed to enter this Order and furnish
4 copies to the parties.

5 DATED October 29, 2021.



7 
8 THOMAS O. RICE
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20